

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CUSHMAN & WAKEFIELD U.S., INC.,	:
	:
Plaintiff,	: No. _____
	:
v.	:
	:
BOCA PARTNER VENTURES II LLC a/k/a	: <u>COMPLAINT</u>
BOCA VENTURE PARTNERS II a/k/a	:
BOCA VENTURES II,	:
	:
Defendants.	:
	:
-----X	:

Plaintiff Cushman & Wakefield U.S., Inc. ("C&W"), by and through its counsel, Loeb & Loeb LLP, brings this action against defendant Boca Partner Ventures II LLC a/k/a Boca Venture Partners II a/k/a Boca Ventures II ("Boca"), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for breach of contract, account stated, and unjust enrichment based on a commercial real estate listing agreement between C&W and Boca. Pursuant to the terms of the listing agreement and for purposes of C&W's claims herein, Boca was obligated to pay \$400,613.81 in commission to C&W. Boca breached the terms of the listing agreement by failing to pay any of the commission owed.

2. By reason of Boca's material breach of the listing agreement, C&W seeks recovery of the unpaid commission. C&W also seeks recovery of its attorneys' fees and costs incurred in connection with this action, pursuant to an express attorneys' fees provision in the listing agreement.

THE PARTIES

3. Plaintiff Cushman & Wakefield U.S., Inc. is a Missouri corporation with a principal place of business in Chicago, Illinois.

4. Upon information and belief, Defendant Boca Partner Ventures II, LLC is a New York limited liability company with a principal place of business at 2626 National Drive, Brooklyn, New York 11234.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) as there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000, exclusive of costs and interest.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district, including the provision of contractual services and multiple communications among the parties related to the actions and omissions described herein.

FACTUAL ALLEGATIONS

7. C&W is among the world's largest commercial real estate services firms.

8. On or about August 10, 2021, C&W, as broker, entered into a Listing Agreement for Lease (the "Listing Agreement") with Boca, as owner and landlord, in connection with the real property located at 1720 Sheepshead Bay Road, Brooklyn, New York 11235 (the "Property").

9. Section 1 of the Listing Agreement sets forth the term, which began on August 10, 2021, and expires on August 9, 2022.

10. For purposes of C&W's claims herein, Section 5 of the Listing Agreement provides that, "[i]f, during the term hereof, Owner leases any interest in the Property, Owner will pay to

C&W a commission in accordance with the attached Schedule of Commissions.”

11. The Schedule of Commissions annexed to the Listing Agreement sets forth that the commission shall be:

Seven percent (7%) of the average annual rental for the first year up to and including the third year of the lease term, plus three percent (3%) of the average annual rental for the fourth year through the remaining term; *provided, however*, if an outside broker procures the tenant, Landlord shall pay C&W one and one-half (1 1/2) times the commission computed and payable in accordance with this Schedule, out of which C&W will pay to such other broker one full commission and retain the balance as C&W’s compensation.

12. In addition, Section 8 of the Listing Agreement provides that, “[i]f either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys’ fees) incurred.

13. In or around October 2021, Boca, as landlord, entered into a lease agreement for the Property with Synergy Fitness Brooklyn, LLC (the “Synergy Lease”). The Synergy Lease provides for a term of ten years and an accommodation of four months of free rent.

14. Pursuant to the Listing Agreement, C&W calculated the commission owed by Boca in connection with Synergy Lease to be \$400,613.81 (the “Commission”). On or about October 28, 2021, C&W sent an invoice to Boca in the regular course of business for the Commission owed.

15. Boca failed to pay the Commission owed pursuant to the Listing Agreement.

16. On or about January 31, 2022, C&W sent a notice of non-payment to Boca, notifying Boca of its failure to pay the Commission owed under the Listing Agreement and demanding that Boca pay the outstanding amount.

17. On or about July 6, 2022, C&W sent another notice of non-payment to Boca, notifying Boca that its continuing failure to pay the Commission owed constituted a breach of the Listing Agreement and again demanding that Boca pay the outstanding amount.

18. To date, Boca has failed to pay the full outstanding amount of Commission owed under the Listing Agreement, \$400,613.81.

FIRST CAUSE OF ACTION
(Breach of Contract)

19. C&W repeats and realleges the allegations set forth in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. C&W and Boca are parties to the valid and binding Listing Agreement.

21. C&W has complied with all of its obligations under the Listing Agreement.

22. Boca materially breached the terms of the Listing Agreement by failing to pay the Commission owed.

23. By reason of the foregoing, Boca is liable to C&W in an amount to be determined at trial, but reasonably believed to be not less than \$400,613.81, together with interest and reasonable attorneys' fees and costs incurred in connection with enforcing the terms of the Listing Agreement.

SECOND CAUSE OF ACTION
(Account Stated)

24. C&W repeats and realleges the allegations set forth in paragraphs 1 through 23 of this Complaint as if fully set forth herein.

25. On or about October 28, 2021, C&W sent an invoice to Boca in the regular course of business for the Commission owed.

26. On or about January 31, 2022, C&W sent a notice of non-payment to Boca, notifying Boca of its failure to pay the Commission owed under the Listing Agreement and

demanding that Boca pay the outstanding amount.

27. On or about July 6, 2022, C&W sent another notice of non-payment to Boca, notifying Boca that its continuing failure to pay the Commission owed constituted a breach of the Listing Agreement and again demanding that Boca pay the outstanding amount.

28. Boca accepted these invoices and notices and did not dispute them.

29. An account has been stated between C&W and Boca.

30. Boca is therefore obligated to pay C&W the amount in the invoice and notices, but has failed to do so.

31. As a result of Boca's failure to pay C&W, Boca is liable to C&W in an amount to be determined at trial, but reasonably believed to be not less than \$400,613.81, together with interest and reasonable attorneys' fees and costs incurred in connection with enforcing the terms of the Listing Agreement.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

32. C&W repeats and realleges the allegations set forth in paragraph 1 through 31 of this Complaint as if fully set forth herein.

33. As alleged above, Boca accepted C&W's real estate brokerage services for its benefit.

34. Having received the benefit of C&W's real estate brokerage services, Boca has failed and refused to tender payment to C&W at the agreed-upon rate for such services.

35. Boca thus wrongfully accepted the services provided by C&W without tender of payment, and has been unjustly enriched at C&W's expense.

36. Equity and good conscience require that Boca make full restitution to C&W in an amount equal to the services provided by C&W and accepted by Boca, but reasonably believed to

be not less than \$400,613.81, together with interest.

WHEREFORE, C&W requests that this Court grant judgment against Boca as follows:

- (a) On the First Cause of Action, in the amount of not less than \$400,613.81, together with interest;
- (b) On the Second Cause of Action, in the amount of not less than \$400,613.81, together with interest;
- (c) On the Third Cause of Action, in the amount of not less than \$400,613.81, together with interest; and
- (d) On all Causes of Action, reasonable attorneys' fees and costs incurred in connection with this action; and
- (e) Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 1, 2022

LOEB & LOEB LLP

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